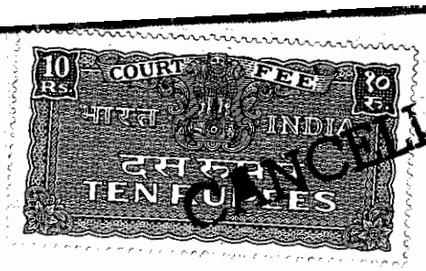

CANCELLED

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Misc. Appeal No. 699 /2003.

APPELLANT
PLAINTIFF : Rajesh Kumar aged 33 years S/o late Shri Brijlal Verma, resident of Palari, Tah. Palari, Distt. Raipur (C.G.).

Versus

RESPONDENTS
DEFENDANTS

1. Shri Deo Prakash, aged 48 years S/o late Shri Brijlal Verma, resident of I Park Sweet House No.1, Choubey coloney, Raipur, Tah. & Distt. Raipur (C.G.).

2. Shri R.K.Chandrakar, aged 50 year S/o Shri R.Chandrakar, Katora Talab, Raipur (C.G.).

3. Shri Om Prakash aged 24 years s/o Shri Punit Ram Khute, resident of Palari, Tah. Palari, Distt. Raipur (C.G.).

4. Anuradha aged 22 years daughter of Shri Punit Ram Khute, resident of Palari, Tah. Palari, Distt. Raipur (C.G.).

5. Shri Amarnath, aged 19 years S/o Shri Punit Ram Khute, resident of Palari, Tah. Palari, Distt. Raipur (C.G.).

6. State of Chhattisgarh through : The collector, Raipur (C.G.).

P. R. No. 12458 Presented by Shri C.D.Sharma dated 29.8.03

ED COPY, 29/7/03 TO A.G. BILASPUR

COURT FEES : Rs 15-00
COURT BELOW : IInd A.D.J.,Baloda Bazar.
C.S.No. : 15-A/2002.
ORDER IMPUGNED : 15-7-2003.

MEMO OF APPEAL UNDER ORDER 43 RULE 1 (R) OF C.P.C.,1908

...of the order dated 15-7-2003

(58)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक MA 699/ सन् 2003

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	12.04.2006 Shri MD Sharma, counsel for the appellant. Shri Manoj Paranjape, counsel for respondent No.1. Shri Ashok Kumar Shukla, counsel for respondent No.2. None for respondents No.3 to 5. Shri Akhil Agrawal, Panel lawyer for respondent No.6/State. Heard on admission. Appellant instituted a suit on 17.07.2002 for declaration and permanent injunction relating to the suit land of survey No.832 area 1.202 hectors situated at village Palari claiming that he is the owner in possession of the suit land and respondents have no right to interfere in his possession. Respondents No.2 to 5 denied the claim on the ground that according to partition dated 30.10.1994, the suit land was allotted in the share of respondent No.1 who was owner and was in possession over it, who in the month of January 1996 sold the suit land to respondent No.2. Thereafter respondent No.2 became owner of the suit land and was in its possession. He sold some part of the suit land on 06.07.2002 to respondents 3 to 5 by a registered sale deed. Appellant filed an application under Order XXXIX Rule 1 & 2 of the CPC for grant of temporary injunction. Learned lower Court, after hearing the parties held that according to partition dated 30.10.1994, the suit land was allotted to respondent No.1, who sold it to respondent No.2 and thereafter, some part of the suit land has been sold by	

छे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respondent No.2 in favour of respondents No.3 to 5. The suit land was in possession of respondent No.1 after the sale, it came in possession of respondent No.2, who transferred some part of the suit land in favour of respondents No.3 to 5 for consideration and also delivered possession to them. Therefore, learned lower Court holding that principle of prima facie case, balance of convenience and irreparable loss do not find favour of the plaintiff, dismissed the application.

To establish possession of the appellant over the suit land no revenue records have been filed by the appellant. On the contrary, entries of Khasra panchshala of 2001-2002 has been filed by other party which prima facie establishes the possession of respondent No.2 over the suit land. Undisputedly, the suit land was ancestral property. Appellant and respondent No.1 are real brothers. Admittedly, when the suit land was sold to respondent No.2, in revenue record, the land was in the name of respondent No.1. The mutation is still under dispute and the dispute is at present pending before the Board of Revenue. It is evident that when the suit land was sold to respondent No.2, at that time, prima facie, the suit land was recorded in the name of respondent No.1 in revenue records. From Khasra entries of 2001-2002 it can be inferred that in revenue records, prior to sale, the entries regarding possession were in the name of respondent No.1 and after sale, the possession was recorded in the name of respondent No.2. Therefore, on the date of institution of the suit, the appellant was not in possession of the suit land, hence, the

पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

principle of balance of convenience and irreparable loss do not find favour of the appellant. Learned trial Court, who after minute appreciation of the material, dismissed the application vide impugned order does not commit any illegality which may call for any interference by this Court.

The Miscellaneous Appeal filed by the appellant is liable to be dismissed in-limine and is accordingly dismissed.

M.(C.)P.Nos. 427/2006, 1201/2003, 1202/2003 and IA No.995/2006 stand disposed of.

Sd/-
V.K.Shrivastava
Judge

padma